

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE J.CHELAMESWAR**

**and**

**THE HON'BLE MR JUSTICE GODA RAGHURAM**

**WRIT PETITION NO : 14701 of 2004**

Between:

1. The Deputy Inspector General of Police-IV, APSP Battalions, Kakinada,  
East Godavari District.
2. The Addl. Director General of Police, APSP Battalions, Hyderabad.

**..... PETITIONERS**

**AND**

T. Surendra, S/o. Late T. Guravaiah, aged 44 years, Occu: Reserve  
Inspector, 11th Bn APSP, Cuddapah.

**.....RESPONDENT**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction more particularly one in the nature of "WRIT OF CERTIORARI" calling for the records connected with order dated 11-03-2004 in

OA No. 5235/2003 on the file of the Hon'ble A.P. Administrative Tribunal at Hyderabad and to quash the same as erroneous and contrary to law.

**Counsel for the Petitioners: GP FOR SERVICES I**

**Counsel for the Respondent: None appeared.**

**The Court at the stage of admission made the following :**

**THE HON'BLE SRI JUSTICE J.CHELAMESWAR**

**AND**

**THE HON'BLE SRI JUSTICE GODA RAGHURAM**

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**WRIT PETITION NO.14701 OF 2004**

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**ORDER:** (PER THE HON'BLE SRI JUSTICE GODA RAGHURAM)

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The respondents in O.A.No.5235 of 2003 aggrieved by the order dated 11.03.2004 of the A.P. Administrative Tribunal (for short 'the Tribunal'), Hyderabad Bench, have filed this writ petition.

2. The petitioners herein are the respondents in O.A.Nos.7841 of 1998, 5257 of 1999 and 5235 of 2003 before the Tribunal. O.A.No.5235 of 2003 was filed challenging the proceedings dated 06.05.2003 of the Inspector General of Police, A.P.S.P. Battalions, Hyderabad. By the said order, the Inspector General of Police, A.P.S.P. Battalions, Hyderabad directed *de novo* departmental enquiry against the respondent herein and appointed the Commandant, 6<sup>th</sup> Battalion, A.P.S.P., as an Enquiry Officer to conduct an oral enquiry against the respondent herein.

3. The respondent, a Reserve Inspector, earlier working in the 6<sup>th</sup> Battalion of A.P.S.P., while working in the 1<sup>st</sup> Battalion was served with a memorandum of

charges on 03.04.1998 alleging involvement in misappropriation of Rs.8,000/- from an individual, who was a bidder, for cleaning thorny bushes from the Undavalli Firing Range and for failing to account for the amount. A departmental enquiry ensued and the Enquiry Officer enquired into the charge and submitted a report holding that the charge was not proved. Consequently, the Disciplinary Authority, the Deputy Inspector General of Police, 4<sup>th</sup> Battalion, A.P.S.P., Kakinada dropped further action against the respondent by proceedings dated 17.12.2002. The Inspector General of Police, A.P.S.P. Battalions, Hyderabad, thereupon *suo motu* went through the departmental enquiry proceedings record and came to the conclusion that there were many procedural irregularities in the earlier oral enquiry conducted against the respondent, that certain vital eye witnesses, who were required to be examined at the time of enquiry, were not so examined and the Enquiry Authority failed to make efforts to examine these witnesses. It was also recorded that the Disciplinary Authority failed to examine this aspect, should have remitted back the case to the Disciplinary Authority for *de novo* enquiry, but instead, the Disciplinary Authority dropped further action. On these conclusions, a *de novo* enquiry was ordered.

4. The Tribunal came to the conclusion that in view of the powers available under Rule 18 of the A.P.C.S. (C.C. & A.) Rules, 1991, the order dated 06.05.2003 directing *de novo* enquiry against the respondent was not irregular and was within the powers available to the Inspector General of Police, A.P.S.P. Battalions, Hyderabad. However, the Tribunal came to the conclusion that the Inspector General of Police, A.P.S.P. Battalions, Hyderabad could have exercised his powers only if the delinquent had preferred an appeal thereby implying that *suo motu* power was not available under Rule 18 of the A.P.C.S. (C.C. & A) Rules, 1991. Accordingly, the order dated 06.05.2003 was set aside. Therefore, this writ petition is filed.

5. Rule 18 of the A.P.C.S. (C.C.&A) Rules, 1991 reads as under:

**“Rule 18. Lower authority not to reopen case: Higher authority can exercise power:-** (1) Where in any case a higher authority has imposed or declined to impose a penalty under Rule 11, 12 or 14, a lower authority shall have no jurisdiction to proceed under these rules in respect of the same case.

(2) Where in any case a lower authority has imposed a penalty or exonerated a member of a service, it shall not debar a higher authority from

exercising his powers under these rules in respect of the same case. The Order of such higher authority shall supersede any order passed by a lower authority in respect of the same case”.

6. Rule 18(2) states that where in any case a lower authority had *inter alia* exonerated a member of a service, it shall not debar a higher authority from exercising his powers under these rules in respect of the same case and that the order of such higher authority shall supersede any order passed by a lower authority in respect of the same case. This rule does not enact a substantive grant of any special, extensive or specific power in the higher authority. No other rule is brought to the notice of this Court, which empowers the higher authority to direct a *de novo* enquiry against an officer in respect of whom, the enquiry officer had found the charges not proved, consequent upon the Disciplinary Authority dropping further action as in the facts of the case.

7. The validity of holding successive inquiries in respect of the same set of allegations in the context of disciplinary proceedings against a Government servant, fell for the consideration of the Supreme Court in *K.R.DEB v. THE COLLECTOR OF CENTRAL EXCISE, SHILLONG*. A Constitution Bench of the Apex Court, after having considered Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules (1957), held that the rule provides for only one enquiry. The Court held that, however, it may be possible in a particular case where there had been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 of the Rules for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9 of the Rules.

8. The power of the Disciplinary Authority under Rule 19 of the A.P.C.S. (C.C.&A.) Rules, 1991 and the procedure for conducting an enquiry, specified in Rule 20 of these rules, is substantially similar to the power available under the Rule 15 of the Central Civil Services (Classification, Control and Appeal)

Rules (1957), which was considered in the case referred to supra.

9. In view of the ratio of the Judgment in *K.R.Deb's* case (supra), we are of the considered view that the Order dated 06.05.2003 of the Inspector General of Police, A.P.S.P. Battalions, Hyderabad, directing a *de novo* enquiry against the respondent is patently incompetent and unsustainable. The conclusion of the Tribunal that the order dated 06.05.2003 is invalid, therefore, suffers from no infirmity, though the reasons recorded by the Tribunal for coming to such a conclusion, do not commend the acceptance of this Court for the reasons recorded supra.

10. On the analysis above, there are no merits in this writ petition and it accordingly dismissed at the stage of admission. No order as to costs.

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J.CHELAMESWAR, J

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GODA RAGHURAM, J

Dated 28<sup>th</sup> October, 2004.

MRK/Cs

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Deputy Inspector General of Police-IV, APSP Battalions, Kakinada,  
East Godavari District.
2. The Addl. Director General of Police, APSP Battalions, Hyderabad.
3. Two C.Cs. to the Government Pleader for Services-I, High Court  
Buildings, Hyderabad. (O.U.T.)
4. Two C.D. copies.